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"Exploring the Mechanisms Rooted in the *Bills of Exchange Act*": SCC

The Supreme Court overturned the Federal Court of Appeal in [*Canada Trustco Mortgage Co. v. Canada*](#), 2011 SCC 36, a bills of exchange case concerning the bank's obligation to comply with requirements to pay issued under the *Income Tax Act*. The tax debtor had deposited cheques payable to him alone in a bank account held jointly with a third party. In a 4/3 split decision the court found that once the bank received the cheques for deposit and credited them to the joint account it acquired the rights of a holder in due course pursuant to s.165(3) of the *Bills of Exchange Act* and was under a contractual obligation to the holders of the joint account to present the cheques for payment. As such the bank was not liable for failure to remit the funds to the CRA pursuant to the requirement to pay.

Interest Income Exempt From Tax Under s.87 of the *Indian Act*: SCC

Interest income earned on term deposits connected to an Indian reserve is exempt from taxation under s. 87 of the *Indian Act* according to the Supreme Court of

Canada in companion cases [Bastien Estate v. Canada](#), 2011 SCC 38 and [Dubé v. Canada](#), 2011 SCC 39. In reaching this conclusion the court rejected the "commercial mainstream" analysis followed by the lower courts, finding that the income-earning activities of the financial institution should not have been given determinative weight:

The exemption from taxation protects an Indian's personal property situated on a reserve. Therefore, where the investment vehicle is, as in this case, a contractual debt obligation, the focus should be on the investment activity of the Indian investor and not on that of the debtor financial institution....(para.60, *Bastien*)

While the decision in *Bastien* was unanimous, two judges dissented in *Dubé*, where the facts differed (the taxpayer's principal residence was not on a reserve and the bank was not on the taxpayer's reserve). To grant the exemption in such circumstances, said the dissenting judges, "would be tantamount to turning the reserve into a tax haven for Indians engaged in unspecified for-profit activities off the reserve." (para.40) It remains to be seen whether these decisions will lead to an expanded application of s.87.

Hearing de Novo Ordered in Business Name Dispute: MBCA

In [Friesen Dental Corp. v. Director of Companies](#), 2011 MBCA 71 the Court of Appeal addresses two issues arising from its earlier [decision](#) ordering the Director of the Companies Office to provide better reasons for declining to issue a name change direction under s. 13 of *The Business Names Registration Act*. On the first issue, the court found that the further hearing should be by way of a hearing de novo, allowing the Director to consider any relevant facts and argument put before him up to the time of rendering the new decision. On the issue of costs, the court declined to depart from the usual principle that a statutory decision-maker is not generally subject to an order for costs. The Director had not misconducted himself and no special circumstances existed which would justify an award of costs against him. As to costs between the parties, the court found there were good reasons to depart from the general rule that costs follow the result. It ordered that there be no order of costs in either the lower court or the appeal court.

Clearer Evidence Required for Interlocutory Injunction Restraining Employment: MBQB

In [Natco Manufacturers and Distributors Ltd. v Topolnitsky](#), 2011 MBQB 197 the court dismissed the plaintiff's application to enjoin the respondent, a former director, officer, shareholder and key employee of the family owned company, from approaching its customers. The court found that although it appeared the defendant owed a fiduciary duty not to solicit customers for a period of time after he left and began work with a competing company, there was insufficient evidence that such solicitation had taken place and there was also no evidence as to how long the "non-solicitation obligations" should persist.

Shareholder Disharmony Not Sufficient to Ground Oppression Remedy: MBQB

Unwillingness to participate in a revision of the general by-laws of a company that had been run harmoniously and exclusively by resolution for 50 years does not constitute oppressive conduct or ground a remedy under s.207 of *The Corporations Act* according to the court in [Hatskin v. Prober](#), 2011 MBQB 216. The court characterized the alleged disharmony as an attempt by a non-shareholder (the son-in-law of a shareholder who was no longer capable of participating) to renegotiate the relationship between the shareholders, and found that under these circumstances it would not be just and equitable to afford the remedy sought.

Legislative Update

[The Condominium Act and Amendments Respecting Condominium Conversions \(Various Acts Amended\)](#) (sections 2 to 5 and 7 to 10 of Schedule B and all of Schedules C, D and E) will come into force November 7, 2011.

Part 2 of [The Electronic Commerce and Information, Consumer Protection Amendment and Manitoba Evidence Amendment Act](#), SM 2000, c.32 will come into force November 28, 2011.

[The Business Practices Amendment Act \(Disclosing Motor Vehicle Information\)](#), SM 2008, c.30 will come into force December 31, 2011.

Sections 7, 8, 11 and 12 of [The Climate Change and Emissions Reductions Act](#), SM 2008, c.17 have been proclaimed and will come into force October 1, 2012.

Proposed Anti-Spam Regulations Released

Both the Canadian Radio-television and Telecommunications Commission ([CRTC](#)) and [Industry Canada](#) released proposed anti-spam regulations this summer. The [Telecom Notice of Consultation CRTC 2011-400](#) and the [Electronic Commerce Protection Regulations](#) flesh out the details of the rules that will apply to commercial electronic messages under Canada's new anti-spam legislation ([CASL](#)), which was passed last December and is expected to come into force January 2012.

In the article [Electronic Commerce Protection Regulations - Much Work Remains](#) the authors suggest that the consensus of those who have commented on the regulations is that "the draft regulations miss the mark, and much work remains before CASL can be proclaimed into law." The authors go on to summarize the identified concerns.

PIPEDA Guidelines

[The Office of the Privacy Commissioner of Canada](#) recently released guidelines for lawyers concerning the [Personal Information Protection and Electronic Documents Act](#), SC 2000, c5. [PIPEDA and Your Practice - A Privacy Handbook for Lawyers](#) "is designed to help lawyers maintain best practices in managing their collection, use and disclosure of personal information, and access thereto, in compliance with PIPEDA standards." It addresses issues faced by both lawyers in private practice and corporate counsel. The website has a [self-assessment tool](#) to allow organizations to assess how well they are protecting the personal information they control.

Business Law Publications

These recent publications may be of interest to business lawyers:

- [Implied Covenants Arising Out of the Transfer of Land](#) - A June 2011 memorandum by Ned Brown on how s.77 of *The Real Property Act* affects day-to-day real estate transactions.
- [Franchisors beware - you may be the employer of your franchisees for WCB purposes!](#) - A Pitblawg post concerning a WCB decision ([No. 99/2011](#)) which deemed franchisees to be employees of the franchisor, obligating the franchisor to pay assessment premiums to the WCB for its workers.
- [Human Rights Considerations for Charities and Not-For-Profits](#) - This [Practice Points](#) article provides an overview of human rights law for charitable and not-for-profit organizations, particularly those of a religious nature.
- [Death by Facebook- The Importance of Reputation Management](#) - Also from Practice Points, this article shows those who have little familiarity with social media why it is critical to consider reputation management before embracing online communication.
- [Why majority should rule](#) - The cover story of the October issue of *Canadian Lawyer InHouse* examines how, as shareholders demand a greater say in the voting process, the heat is now on Canadian organizations to implement majority-voting policies.

- [Cracking down on corruption](#) - This September 2011 *InHouse* post discusses Canada's efforts to control foreign bribery and other corrupt practices by Canadian companies operating abroad.

Fall CPD Programs: LSM

Be sure to register soon for these upcoming continuing professional development programs offered by the Law Society:

- [Succession Planning](#) - This topical program will address what you need to know about retiring or winding down your practice from a variety of perspectives. Presenters include practice advisors from the LSM and Alberta, a Law Society contract custodian, and the lawyers' insurance counsel from Nova Scotia. The program takes place October 6, 2011, from 9:00 a.m. - 12:00 noon, followed by a networking lunch.
- [When the Family Business Fails](#) - This half-day program will explore what happens when a family business fails, including the application of *The Family Property Act* on relationship breakdown and estate freezes and family trusts. It takes place November 2, 2011, from 1:00 - 4:00 p.m. at the Law Society classroom.

Back From the Brink: Insolvency in the New Era - 2011 Isaac Pitblado Lectures

The [2011 Isaac Pitblado Lectures](#) will explore the latest developments in bankruptcy and insolvency law, with a focus on "made in Manitoba" problems and solutions. Keynote speakers include Frank Bennett, Bob Klotz, and Professor Janis Sarra. The lectures will be held November 25 and 26 at the Fort Garry Hotel.

Bar Association Programs

The Business Law and Technology and Intellectual Property Law sections of the Manitoba Bar Association are jointly hosting a lunch meeting with speaker Silvia de Sousa on [Electronic Signatures: What you need to know](#). The meeting will take place from 12:00 noon to 1:30 p.m. on October 19, 2011 at the offices of Thompson Dorfman Sweatman LLP. Register [online](#) or by contacting the MBA.

[Skilled Lawyer Series II - Corporate Stream](#) - The CBA has announced the line-up for its second series of online programs for business lawyers. Upcoming programs include: Raising Capital-Equity Financing (live on November 15, 2011); Key Issues in Business Financing (December 14, 2011); IP Issues in Corporate Transactions (February 1, 2012); Beware the Boilerplate: How "Standard" Clauses can Undo Commercial Contracts (February 22, 2012); Real-life Lessons in Corporate Governance (March 28, 2012); Negotiating and Drafting Commercial Leases (May 2, 2012); Advising Corporate Clients on Liquidation and Dissolution (May 30, 2012); Ethics for Business Lawyers (June 13, 2012).

Competition Law Conference

It's still possible to register for the 2011 Annual Fall [Competition Law Conference](#) which takes place October 5 - 7, 2011, in Gatineau, Québec. The conference will review recent legal developments and emerging trends in Canadian competition law, including pricing practices, competition class actions, criminal investigations and foreign investment review. See the [conference brochure](#) for further details.

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